



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169581

PRELIMINARY RECITALS

Pursuant to a petition filed October 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 19, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly modified the Petitioner's request for personal care worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Cindy Zander

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On May 11, 2015, the Petitioner's provider, [REDACTED] Health Care Agency, submitted a PA request on behalf of the Petitioner requesting 26.5 hours/week of PCW services. The PA request

included a Home Health Certification and Plan of Care with physician's orders signed by a physician for services effective May 31, 2015.

3. On July 22, 2015, the agency issued a notice to the Petitioner informing her that it had modified the PA request to approve 6.25 hours/week of PCW services. The notice also informed the Petitioner of the right to appeal this determination to the Division of Hearings and Appeals by filing a request for hearing no later than September 5, 2015.
4. On August 13, 2015, the agency received an amendment request from the provider requesting to increase PCW services to 26.5 hours/week.
5. On September 29, 2015, the agency issued a notice to the Petitioner informing her that it had denied the amendment request. The notice also informed the Petitioner of the right to appeal this determination to the Division of Hearings and Appeals by filing a request for hearing no later than November 13, 2015.
6. On October 20, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals. The Petitioner submitted additional medical information with her appeal letter.
7. On or about November 3, 2015, the agency reviewed the Petitioner's additional information and determined that Petitioner had a change in condition which warranted approval of the amendment request. The agency approved 26.5 hours of PCW services effective August 13, 2015.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a determination by the agency concerning Medicaid benefits must be filed within 45 days of the date of the action. Wis. Stat., § 49.45(5).

In this case, the initial determination by the agency to modify the Petitioner's PA request to allow 6.25 hours/week effective May 31, 2015 was made by the agency on July 22, 2015. The Petitioner had until September 5, 2015 to file an appeal of this determination. A new request to increase PCW hours was received from the Petitioner's provider on August 13, 2015. Though that request was initially denied, it was ultimately approved by the agency.

At the hearing, the Petitioner's grand-daughter testified that the Petitioner's change in condition occurred earlier than August 13, 2015 though the diagnoses and records to support the requested increase were not submitted until October, 2015. The agency did decide to approve the requested increase effective August 13, 2015 based on the documentation provided. However, the agency did not approve the request retroactive to the original request for May 31 because, it asserts, there was insufficient evidence to support the request beginning May 31.

With regard to the agency's modification in the PA request effective May 31, 2015, I do not have jurisdiction. The Petitioner had to file an appeal of that determination no later than September 5, 2015. The Petitioner's appeal was filed with DHA on October 20, 2015. Therefore, I must find the appeal is untimely as regards the determination by the agency of July 22, 2015 to modify the PA request to 6.25 hours/week effective May 31, 2015. With regard to the agency determination of September 29, 2015, there is no longer an issue because the agency approved the Petitioner's amendment request.

CONCLUSIONS OF LAW

With regard to the agency determination on July 22, 2015 to modify the Petitioner's PA request to 6.25 hours/week of PCW services, the Petitioner's appeal is untimely.

With regard to the agency determination on the Petitioner's August 13, 2015 amendment request, there is no longer an issue for determination because the agency approved the request.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

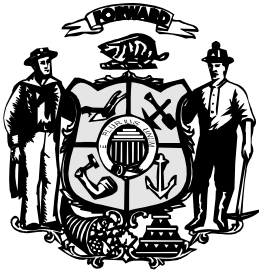
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of January, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 15, 2016.

Division of Health Care Access and Accountability